

SO ORDERED.

SIGNED this 29 day of November, 2009.



**DIANE DAVIS
UNITED STATES BANKRUPTCY JUDGE**

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

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IN RE:
Miguel Diaz,
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DEBTOR.

CASE NO.: 08-60239-DD

Chapter 13
JUDGE: DIANE DAVIS

**AMENDED ORDER CONDITIONALLY GRANTING RELIEF FROM
THE AUTOMATIC STAY**

UPON the application filed by U.S. Bank, N.A., scheduled before this Court for December 18, 2008, seeking an Order pursuant to 11 U.S.C. Section 362 (d) providing that the automatic stay imposed by operation of 11 U.S.C. Section 362 (a), be modified and terminated to Applicant to pursue its rights as more particularly described in the Application, to the premises located at 1133 Kossuth Avenue, Utica, New York 13501; and (ii) granting such other and further relief as is just and proper; the Motion was served

on the Debtor, Debtor's Attorney, and the Chapter 13 Trustee; and the parties having agreed to entry of the Conditional Order signed by the Court on December 22, 2008; and

The Debtor failed to cure the stipulation payments due by February 30 2009, March 30, 2009, April 30, 2009 and May 30, 2009, as well as the regular payments due April 1, 2009 through October 1, 2009 and a Ten (10) Day Notice to Cure was served to the Debtor and Debtor's Attorney; and

The Debtor failed to satisfy the Notice to Cure and an Affidavit of Non-Compliance and ExParte Order were submitted to the court on July 1, 2009; and

The Debtor now requests an extension to cure arrears; and

The Affidavit of Non-Compliance is hereby formally withdrawn; and it is hereby

ORDERED that the Conditional Order signed by this Court on December 22, 2008 is amended as set forth below, and it is further

A. **ORDERED** that on or before April 15, 2010, the debtor shall pay Movant all post-petition arrears on his mortgage; such sum shall be good through November 30, 2009, and said arrears are broken down as follows:

2/30/09 and 3/30/09 Stipulation Payment @ \$644.51 ea.	= \$1,289.02
4/30/09 and 5/30/09 Stipulation Payment @ \$644.50 ea.	= \$1,289.00
5 Late Payments (04/09 – 08/09) @ \$608.86 ea	= \$3,044.30
3 Late Payments (09/09-11/09) @ 639.48 ea.	= \$1,918.44
8 Late Charges (4/09-11/09) @ \$14.28 ea.	= \$114.24
<u>Suspense Balance</u>	<u>= -(460.44)</u>
Total	= \$7194.56,

and arrears are to be paid back as follows:

AMOUNT	DUE BY
\$2476.00 \$609, \$609 and \$650)	11/05/09 *(Arriving as 4 separate postal money orders iao \$608,
\$786.43	11/15/09
\$786.43	12/15/09
\$786.43	01/15/10
\$786.43	02/15/10
\$786.43	03/15/10
\$786.41	04/15/10,

and payments shall be made by certified funds and mailed to:

U.S. Bank, N.A.
~~4801 Frederica Street~~ 7720 N. 16th Street, Suite 300
~~Owensboro, KY 42301~~, Phoenix, AZ 85020

and it is further,

B. ORDERED that the Debtor shall make timely regular monthly payments to Movant at the address listed above by the 1st day of each and every month, commencing with the December 1, 2009 payment, and it is further

C. ORDERED that in the event the debtor fails to tender the sums due under paragraph A hereinabove, or fails to make payments described in paragraph B hereinabove, and thereafter fails to comply with a ten (10) day Notice to Cure, then upon the filing of an Affidavit of Non-Compliance and the submission and signature of an Ex-Parte Order and Application, the automatic stay is vacated with respect to the mortgage held by Movant and the Co-Debtor stay shall be terminated as against the Co-Debtor Rita Rios to the extent necessary to allow it, its successors and/or assigns, to commence and/or continue mortgage foreclosure and eviction proceedings on the real property located at 1133 Kossuth Ave., Utica, New York 13501.

D. ORDERED that in the event the debtor fails to tender the sum due under paragraph "A" and/or the payments due pursuant to paragraph "B" hereinabove, and if four (4) notices to cure had previously been sent to debtor and debtor's attorney pursuant to paragraph "C" hereinabove, (for four previous defaults under this order), the automatic stay and the Co-Debtor stay will be vacated upon filing of an Affidavit of Non-Compliance and the submission and signature of an Ex-Parte Order, and it is further

E. ORDERED that the relief obtained by Movant upon the signature of the Ex-Parte Order will include relief from the Automatic stay and relief from the Co-Debtor stay pursuant to 11 U.S.C. § 1301 (c).

CONSENTED AND AGREED TO BY:



David M. Gigan, Esq.
Attorney for Debtor

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